srp.

HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2983 OF 2007.

Smt. Anusaya Krishna Kakade. ..Petitioners.

Versus.

The Principal, New English School,
Adarki Bk. & others. ..Respondents.

Chandrakant N. Chavan for the petitioner.

C. R. Sonawane A.G.P. for the State.

CORAM: S. B. MHASE &
R.S.MOHITE, JJ.

DATE: JUNE 26, 2007.

P.C.

1. Heard. The petitioner’s husband was in service with the respondent - Swami Vivekanand Shikshan Sanstha, Kolhapur. By letter dated 28.12.1990 he submitted resignation. The same was accepted under Rule 14(1) of the M.E.P.S. Rules. He expired and thereafter his wife, i.e., the present petitioner, is claiming the pension. The Pension Rules applicable to the government employees are applicable to the teachers and non teaching staffs in the private schools in view of Rule-19 of the M.E.P.S. Rules. Under the Pension Rules, Rule-46 specifically states that if the resignation is given the pension gets forfeited. Since in this case resignation has been accepted under Rule -14(1) of the M.E.P.S. Rules, the Government has rejected the family pension to the petitioner.

2. Learned Counsel for the petitioner has placed reliance on **1997 ICLR 877 in the matter of K. S. Govekar v/s. State of Maharashtra and others and 1995 (2) Bom.C.R. 249 in the matter of Anandrao Dhondiba Kandalkar v/s. State of Maharashtra and others.** We have perused these judgments. We find that in both the judgments the person who got the pensionary benefits had submitted an application for voluntary retirement and thus after taking voluntary retirement the pensionary benefits were claimed. Therefore, the facts of the present case and the facts of the reported cases are not akeen so that we can apply the ratio therein. Apart from that the Rules provide for taking a voluntary retirement after completion of 20 years of service. The petitioner's husband should have taken a voluntary retirement instead of tendering a resignation. We find no substance in the petition. Therefore we reject the petition.

(R.S.MOHITE, J.) **(S.B.MHASE, J.)**